IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5279 of 1997

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAYKUMAR BALDEVBHAI PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioners
MS DARSHNA PANDIT, AGP, for Respondent : 1
NOTICE SERVED for Respondent 3
MR BAROT FOR MR. HS MUNSHAW for Respondent : 2

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/09/2005

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioners challenge the

order dated 23rd August 1976 passed by the District Development Officer, Gandhinagar, imposing penalty at 40 times the non-agriculture assessment for alleged non-agriculture use of their land and also conversion tax at the rate of Rs.15/- per sq. mt., as well as the order dated 27th February 1997 passed by the Secretary (Appeals), Revenue Department, confirming the order passed by the District Development Officer.

2. The facts of the case are that the petitioner No.1 is the owner of land admeasuring 4383 sq. mtrs. of survey No./Block No.114 of Mouje Motera, Taluka Gandhinagar, District Gandhinagar (hereinafter referred to as “the subject land”). The petitioner No.2 is the occupier of the said land. One Somabhai Karsanbhai, respondent No.3 herein, was occupying the subject lands in the year 1991-92. It appears that, for a period of two months, in the year 1991-92, the said Somabhai Karsanbhai had stored charcoal on the subject lands. On the basis of a panchnama drawn by the Circle Inspector on spot inspection, the District Development Officer had initiated proceedings for contravention of provisions of Section 65 of the Bombay Land Revenue Code, 1879 (the Code) in view of the aforesaid

unauthorised non-agriculture use of the subject lands in the year 1991-92 by the respondent No.3. Pursuant to a notice dated 3rd May 1996 issued by the District Development Officer, Gandhinagar, calling upon the occupier of the said land, to show cause as regards the contravention of Section 65 of the Code, the petitioner No.2, who was the occupier of the subject lands at the time of issuance of notice, appeared before the District Development officer and submitted that the lands are owned by the petitioner No.1 and that the subject lands had been used for the non-agriculture purpose of storing charcoal for a period of two months during 1991-92 by the then occupier Shri Somabhai Karsanbhai, and that, for the said breach, if the occupier was liable to pay penalty, the same would be paid. It was also submitted that thereafter, the said land has not been put to non-agriculture use.

3. By an order dated 25th August 1996, the District Development Officer, held that the land had been put to unauthorised use for non-agriculture purpose during the year 1991-92 and accordingly, imposed penalty equal to 40 times the non-agricultural assessment, which was quantified at Rs.26,051=20. It was further held that

the conversion tax at the rate of Rs.15/- per sq. mt. amounting to Rs.65,745/- was also payable. Accordingly, an amount aggregating to Rs.92,796=20 was held to be payable by the petitioner.

4. The petitioner carried the matter in revision before the Secretary (Appeals). The Secretary (Appeals), for the reasons stated in his order dated 25th February 1997, rejected the revision application and upheld the order of the District Development Officer.

5. Being aggrieved by the aforesaid two orders, the petitioner has approached this Court by way of the present petition.

6. Mr.M.R.Bhatt, the learned advocate appearing on behalf of the petitioner has fairly submitted that it is an admitted position that there has been default by way of unauthorized use of the subject lands for non-agriculture purpose in the year 1991-92. He, however, challenged the impugned order mainly on two counts. Firstly, on the ground that the levy of penalty at 40 times the assessment was contrary to the Government Resolution dated 28th September, 1984; and secondly, on

the ground that though the subject lands were rightly classified under the category at serial No.1 in the Table below Section 67A of the Code which provides for the rate of conversion tax, in fact, the conversion tax was levied at the rate applicable to lands belonging to the category at serial No.5 in the said Table.

7. Referring to the Government Resolution dated 20th September, 1984, it was pointed out that the same specified three types of defaults. The first type of default pertains to those cases wherein permission has been sought for non-agricultural use for the purpose of brick-kiln, or for tiles or pottery industries; and the permission is liable to be granted in accordance with the rules, however, before such permission is actually granted, the land is used for such non-agricultural purpose. In such cases, the penalty prescribed is 10 times the non-agricultural assessment. The second type of default pertains to those cases wherein land is put to non-agricultural use without seeking permission, but where if such permission had been sought for, the same was liable to be granted. In such cases, penalty has been prescribed at 20 times the non-agricultural assessment. The third type of default pertains to

those cases wherein the soil from the land has been used for the purpose of brick-kiln, or for tiles or pottery industries without permission and in a manner as would adversely affect the value of the land or in case where permission has been sought for but has been rejected. In such cases, penalty has been prescribed at 40 times the non-agricultural assessment. It was further submitted that in the present case, penalty had been imposed at 40 times the non-agricultural assessment, which could have been imposed only if the soil from the land had been used so as to adversely affect the value of the land or if permission had been sought for and rejected. However, the case at hand did not fall under either of the categories, because storing of charcoal did not involve use of soil of the land, hence, the first part was not satisfied, and that it is nobody's case that permission had been sought for and refused, hence, the second part was also not satisfied. Hence, in no case would the petitioner be liable to be penalized under the third type of default. It was submitted that the breach committed in the present case would fall under the second type of default, because, had permission been sought for the purpose of storing charcoal, the same was liable to be

granted, which entailed penalty at the rate of 20 times the non-agricultural assessment. Accordingly, it was submitted that the levy of penalty at 40 times the non-agricultural assessment was contrary to the aforesaid Government resolution and called for intervention on the part of this Court.

8. The learned advocate has also drawn attention of the Court to the provisions of section 67A of the Code (with particular reference to the Table below the said section) which provides that an occupant would be liable to pay conversion tax at the rate specified in the corresponding entry (in columns (3), (4), (5), (6) & (7)) if land assessed or held for the purpose of agriculture in an area specified in column (2) of the said Table is used for any other purpose without the permission of the Collector being first obtained. Referring to the Table below section 67A, it was pointed out that the lands of the petitioner fell under the first category specified in the said notification, namely “Municipal boroughs and notified areas with a population not exceeding 50,000 and their adjoining areas”, hence, conversion tax was required to be levied at the rate specified in column No.7 corresponding to

the first category i.e., at the rate of Rs.1,85 ps. It was further submitted that, upon perusal of the impugned order dated 23rd August 1996 passed by the District Development Officer, it is evident that the conversion tax has been levied considering the petitioner to be falling under the first category. However, despite the said fact, the conversion tax has been levied at the rate of Rs.15 per sq. mt. which is the amount applicable to lands falling in category 5, namely, “cities and municipal boroughs with a population exceeding 5 lakhs and their adjoining areas”.

9. The learned advocate, accordingly, submitted that the aforesaid aspects have not been considered in proper perspective by the respondent authorities, and prayed that the matter be remitted back to the authorities for considering the aforesaid submissions of the petitioner and passing appropriate orders thereon.

10. Mr.Barot, the learned advocate appearing on behalf of the respondent No.2, has no objection if the aforesaid course of action is adopted.

11.Upon considering the provisions of section 67A of the Code, with particular reference to the Table below the said section, as well as Government Resolution dated 28th September 1994, this Court finds that there is considerable force in the submissions made by the learned advocate for the petitioner. On a plain reading of the aforesaid Government Resolution, it is apparent that the third type of default pertains to those cases wherein the soil from the land has been used for the purpose of brick-kiln, or for tiles or pottery industries, without permission and in a manner as would adversely affect the value of the land or in case where permission has been sought for but has been rejected. Prima facie the petitioner does not appear to fall under the said category of default. Neither the District Development Officer, nor the Secretary (Appeals) appear to have examined the issue from this angle. The second contention as regards the rate of conversion tax as would be applicable in respect of the subject land also requires consideration, as the authorities have classified the same under serial No.1, whereas conversion tax has been levied at the rate applicable to land falling in the category of lands described at serial No.5. However, these being

questions of fact, it would be just and proper if the petitioner is relegated to the revisional authority for the purpose of deciding the aforesaid issues keeping in mind the submissions made on behalf of the petitioner.

12. Accordingly, while upholding the findings of the District Development Officer and the Secretary (Appeals) regarding use of land for a purpose other than agriculture without first obtaining the permission of the Collector; both the impugned orders are set aside to the extent of quantum of penalty imposed and the rate of conversion tax levied by the said orders. The matter is remitted to the Secretary (Appeals) to decide:

(i) As to under which of the three categories specified under the Government resolution dated 20th September, 1984, the alleged non-agricultural use would fall, and to impose penalty accordingly;

(ii) The rate of conversion tax applicable in relation to the subject lands, after specifying the category under which the said

lands would fall at the relevant time and levy conversion tax accordingly.

It would be open to the Secretary (Appeals) to remit the matter to the District Development Officer if he so deems fit.

13. In the result, the petition is allowed to the aforesaid extent. By order dated 4th August 1997, this Court had directed the petitioner to deposit an amount of Rs.40,000/- with the respondent No.2 on or before 21st August 1997. In its order dated 19th September 1997, the Court has recorded a statement made on behalf of the petitioner that the amount had been deposited with the respondent No.2. After the amount of penalty and conversion tax payable by the petitioner is determined by the authority, pursuant to the aforesaid directions, the amount already deposited shall be adjusted against the amount that may be finally determined. In case the amount so determined is less than the amount deposited, the balance amount shall be refunded to the petitioner. In case any excess amount is payable by the petitioner, the same shall be paid by the petitioner.

14.Rule is made absolute accordingly. There shall be no order as to costs.

[HARSHA DEVANI, J.]

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